

SIDE YARD VIOLATION IN FOUR SEPARATE SIDE YARDS

A. Law

Definition of Side Yard (§ 199.1):

Yard, side - a yard between any portion of a building or other structure and the adjacent side lot line, extending for the full depth of the building or structure.

§ 405.9

Side yards shall be provided on lots in Residence Districts as set forth in the following table, subject to the special requirements of other provisions of this chapter:

In R-1-B, the Requirement is 8 Feet

B. Facts

The Site Plan shows

- (1) an Elevated Platform Structure
- (2) At a Height greater than Four Feet and
- (3) Well within the required 8 Foot Setback Area

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BOARD OF ZONING ADJUSTMENT
District of Columbia

CASE NO. 18469

EXHIBIT NO. 22

C. Precedent

Finding of Fact #3 from BZA Appeal No. 17285 (the "Economides" BZA case):

"The subject dwelling is required to have an 8-foot side yard and a 25-foot rear yard open to the sky from the ground up, with no intervening buildings or structures, other than those specifically permitted by the Zoning Regulations. *See*, 11 DCMR §§ 405.9 and 404.1 and § 199.1, definition of "Yard.""

The Board's Conclusion of Law in BZA Appeal No. 17285:

"The elevated platform structure is [1] **more than four feet above grade** and [2] is **not merely a "retaining wall,"** therefore [3] it is not permitted within a rear **or side yard**, and DCRA erred in issuing Permit No. B460927 allowing its construction."

This Case is identical as it relates to Side Yards.

Conclusion in this Case:

The elevated platform structure is [1] **more than four feet above grade** and [2] **not merely a "retaining wall"**, therefore it is **not permitted within a side yard** and DCRA erred in issuing Building Permits No. RW1200113 and No. RW1200111.

REAR YARD VIOLATION IN BOTH REQUIRED REAR YARDS

A. Law

Definition of Rear Yard (§ 199.1):

Yard, rear - **Yard, rear** - a yard between the rear line of a building **or other structure** and the rear lot line, except as provided elsewhere in this title. The rear yard shall be for the full width of the lot and shall be unoccupied, except as specifically authorized in this title. [Emphasis added]

§ 404.1

A rear yard shall be provided **for EACH structure** located in a Residence District, the minimum depth of which shall be as set forth in the following table.” [Emphasis added]

In R-1-B = 25 feet.

B. Facts (Not in Dispute)

The Site Plan shows

- (1) an Elevated Platform Structure approximately ten (10) feet from the rear property line.
- (2) At a height greater than Four Feet and
- (3) Well within the required 25-Foot Rear Yard as Measured from the EPS to the rear lot line.

C. Precedent

In Carome (# 17285), the Board (FN #5) declined to make a Ruling on whether or not the Rear Yard is measured from the house outward, or from the EPS outward. Leaving the determination for this Board.

The two cases cited by the Property Owner as precedent are not germane, as the issue in those cases involved accessory structures which were otherwise permitted to be located in a required rear yard.

To the extent the Board considers them germane, then they are simply incorrect, as they do not comply with the plain language of the above-referenced Zoning Regulations, and that incorrect interpretation of the plain language of the Zoning Regulations should not be continued.

Conclusion in this Case:

The plain language of § 404.1 requires a rear yard of twenty-five feet for “each structure” on a lot. The plain language of § 199.1 provides that the rear yard is the yard between such “other structure” and the rear lot line.

There is an “other structure” – the Elevated Platform Structure - about 10 feet from the rear property line at a height greater than four feet.

Since the distance between that other structure (the EPS) and the rear lot line is only ten feet, fifteen feet short of the requirement, the ZA erred in issuing Building Permits No. RW1200113 and No. RW1200111.

To conclude otherwise would have the absurd effect of requiring “middle yards” but allowing structures directly abutting neighboring property to the maximum height permitted under the Zoning Regulations.

LOT OCCUPANCY VIOLATION IN BOTH REQUIRED REAR YARDS

A. Law

Definition of Lot Occupancy (§ 199.1):

Percentage of lot occupancy - a figure that expresses that portion of a lot lying within lot lines and building lines that is occupied or that may be occupied under the provisions of this title as building area; except as provided in the Waterfront Districts wherein lot occupancy shall be calculated in accordance with § 932, and Mixed Use Districts wherein the percentage of lot occupancy may be calculated on a horizontal plane located at the lowest level where residential uses begin. (21 DCR 1030aa, 21 DCR 1423, 51 DCR 3440 and 52 DCR 6358)

Definition of Building Area (§ 199.1)

Building area - the maximum horizontal projected area of a building and its accessory buildings. The term "building area" shall include all side yards and open courts less than five feet (5 ft.) in width, and all closed courts less than six feet (6 ft.) in width. Except for outside balconies, this term shall not include any projections into open spaces authorized elsewhere in this title, nor shall it include portions of a building that do not extend above the level of the main floor of the main building, if placed so as not to obstruct light and ventilation of the main building or of buildings on adjoining property. (Case No. 62-32, May 29, 1962)

§ 403.2

No structure, including its accessory building, shall occupy its lot in excess of the percentage of lot occupancy set forth in the following table. [Emphasis added]

In R-1-B = 40%

B. Facts

The Site Plan shows

- (1) an Elevated Platform Structure which is estimated to take the lot, when considering the existing house, well over the forty percent maximum permitted lot occupancy (there is no calculation within the permit documents because the permits were filed and processed as "retaining wall" permits, rather than permits for structures not exempted from the open space requirements under §2503.
- (2) The Elevated Platform Structure is over four feet in height.

C. Precedent

Again, the plain language of the above-reference regulations provides clearly that this calculation applies to all structures, not just the principal house.

Intervenor claims that since the word "building" is used in the building area definition, that only buildings are included in lot occupancy calculations, anywhere outside of the Wesley Heights Overlay. The Board in Carome was only ruling on what was the ruling in the WH Overlay. It did not opine on what was the case in non-overlay areas. In fact, in FN #6 of Order No. 17258, the Board notes that the general lot occupancy requirement language under § 403.2 ("no structure... shall occupy") "comports with the language of the lot occupancy provision of the Wesley Height's Overlay"

Conclusion in this Case:

The plain language of § 403.2 requires that this elevated platform structure be included in the lot occupancy calculation.

Since the inclusion of the elevated platform structure must be included in the lot occupancy calculation, the lot exceeds its permitted lot occupancy and the ZA erred in issuing Building Permits No. RW1200113 and No. RW1200111

See Next Section for Discussion of § 2503.2

No Part of the Elevated Platform Structure – even those portions lower than Four Feet in height – is permitted to be located within a required yard or open space.

Pursuant to § 199.1: “A yard required by the provisions of this title shall be open to the sky from the ground up, and shall not be occupied by any building or structure, except as specifically provided in this title.”

One exception to that rule is in § 2503.2

“A structure, not including a building **no part of which** is more than four feet (4 ft.) above the grade at any point, may occupy any yard required under the provisions of this title. [Emphasis Added.]

Intervenor calls Appellant’s reliance on the plain language of the Zoning Regulations “semantics”. Intervenor also claims that Appellant “misreads” this Section because she follows the plain language therein. (?)

But later, Intervenor openly acknowledges that the plain language of this exception requires the Board to find that the **entire** elevated platform structure is prohibited from occupying required yards, since at least part of this structure is over four feet.

Intervenor then asserts that the Board should simply ignore that plain language, and replace it with their desired interpretation, because in their opinion it would lead to an absurd result.

Just because the plain language of the Zoning Regulations does not favor an applicant, does not make that result absurd.

In this case, there is certainly nothing absurd about the result. The Zoning Regulations do not provide an exception under 2503.2 for structures which have portions which are four feet or higher.

Intervenor Cites the Carome Order in support of its interpretation. But that Order does not support their position in any way. In the Order, the Board concluded that:

The elevated platform structure is more than four feet above grade level and is not merely a “retaining wall,” therefore it is not permitted within a rear or side yard...”

The Board identifies the EPS as a single, solitary structure. It does not parcel out portions of the EPS which are higher or lower than four feet.

It’s academic if the Board follows the plain language of the Rear Yard requirements, since the portion of the wall over four feet sits squarely in that required rear yard.

Artificial Starting Grade Elevation.

Intervenor claims – and the ZA agrees - that when measuring the height or area of the EPS, one can first “deem” the natural grade finished at a 2:1 grade before starting to measure the height or area.

No support at all for this contorted fiction.

It ignores the fact that the relative grade on neighboring properties has not been so increased, and the relative height of the structure as it impacts neighboring properties is made up of the entire structure, not merely the area filled in AFTER a 2:1 grade is filled in first.

Artificial Measuring Point at the Back of the Wall

As you can see from the Photo, the Building increased the grade several feet before measuring the retaining wall. This is inappropriate. The height has to be the total height from pre-existing grade to top of the wall. Otherwise, that measurement has little value in determining the actual height of this wall over neighboring properties.